## Neighborhood/Community Affairs Committee Meeting September 30, 2013

A Discussion Regarding Criminal Background Checks For Employees Of City Contractors And Spot Check Updates For Those Background Checks Commission Item C40, February 6, 2013

Alex Denis, Procurement Director

# Supplemental

**ITEM #5** 



City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

### COMMITTEE MEMORANDUM

TO:

Neighborhood/Community Affairs Committee Members

FROM:

Jimmy L. Morales, City Manager

DATE:

September 30, 2013

SUBJECT: DISCUSSION REGARDING CRIMINAL BACKGROUND CHECKS FOR

EMPLOYEES OF CITY CONTRĂCTORS AND SPOT CHECK UPDATES FOR

THOSE BACKGROUND CHECKS

#### INTRODUCTION

At its April 29, 2013, meeting, the Neighborhood and Community Affairs Committee (the Committee) discussed the City's requirements for background checks conducted on employees of City Contractors. Specific discussions were had on construction contracts, contracts for services with close proximity to children and on the requirements for contractor employee background checks adopted by Miami-Dade County. After discussion, the Committee approved the City Manager's recommendation that staff return with recommendations for requiring background checks on employees of City contractors.

#### **BACKGROUND**

Background Checks on Employees of City Construction Contractors. Staff discussed the issue of background checks with several governmental agencies, including Miami-Dade County, the City of Miami and the Miami-Dade County School Board. Miami-Dade County and the City of Miami do not conduct routine background checks on contractor employees, except for high security contained sites such as the airport and seaport with controlled access. The Miami-Dade County School Board does routinely require background checks on contractor employees; however, all their sites are site contained with controlled access. Staff was not able to identify any municipality that required background checks on contractor employees for sites that did not have controlled access points.

Background Checks for Contractors Working on Sites with Close Proximity to Children. Florida Statute 1012.467 requires background screening of individuals who provide contracted non-instructional services to Florida public schools or districts when students are present. The law requires that the background checks in these cases comply with Florida Department of Law Enforcement (FDLE), Level II Screenings, which include fingerprinting and background searches through local and national databases. Background screening requirements for employees of Miami-Dade County School Board contractor employees complies with the statutory requirement as does the policy of many non-school agencies with programs in which children participate. Background checks processing are handled on site by School Board personnel.

Miami-Dade County Requirements for Contractor Employee Background Checks for Non-Construction Contracts. Miami-Dade County requirements for contractor employee background checks for non-construction contracts vary by site. For example, the requirement for contractor employees on airport and seaport facilities differs from the requirements for correctional facilities, administrative offices, court houses, water and sewer facilities and parks and recreational centers. There is no standard of background checks across all county facilities or contracts.

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In some cases, background checks are conducted by County personnel. In other cases, background checks are conducted by third-parties. For example, many of the background checks for access to the airport and seaport facilities are conducted by the Transportation Security Administration (TSA).

<u>City of Miami Beach Current Practices.</u> The City has an intergovernmental agreement with the FDLE that gives the organization access to its Volunteer & Employee Criminal History System (VECHS). Through VECHS, FDLE and the Federal Bureau of Investigations (FBI) provide qualified organizations in Florida, state and national criminal history record information on applicants, employees and volunteers; level II screenings. Submissions are electronic and responses are usually received within 24 hours. Applicant and independent contractor submissions cost \$45 each and those for volunteers are \$33. This fee is not inclusive of the labor cost associated with taking the fingerprints, retrieving the information and doing whatever follow-up is necessary.

On or about November 2012, the Human Resources Department started conducting fingerprint-based criminal background checks on all temporary staffing agency employees prior to them beginning their respective assignments with the City. Although the City's contracts with the different staffing agencies require each to conduct criminal background checks on their employees, the Administration decided that the only way to ensure they were to the City's standard was to conduct the checks in-house. The City also conducts criminal background checks on all volunteers, student interns and independent contractors, when requested. Independent contractor employees are also currently checked upon request.

The information received from these background checks do not tell the entire story and when a report comes back with what is referred to as a "hit", additional work is required to protect the City from charges of illegal discrimination. Staff needs to research and reach out to other government agencies or to the individual for additional information. The fact of an arrest does not establish that criminal conduct has occurred, and an exclusion from employment based on an arrest, in itself, is not job related and consistent with business necessity. However, an employer may make an employment decision based on the conduct underlying an arrest if the conduct makes the individual unfit for the position. The line an organization must walk is fine as blanket policies against hiring people who have been arrested may have a disparate impact upon a protected group; incomplete and improper background checks have the potential to one day expose the City to a negligent hiring charge.

#### **RECOMMENDATIONS**

Based on the aforementioned, staff recommends the following regarding the requirement to conduct background checks on employees of City contractors.

1. Service Contracts with Potential for Close Proximity to Children or Other Sensitive Areas of Coverage. These contracts include services for janitorial, security guards, grounds maintenance, temporary personnel and, independent contractor agreements for coaching and recreational services. In these cases, it is recommended that FDLE Level II background checks be completed. In order to provide some safeguards assuring that the background check requirement has been met, it is also recommended that employees for these service contracts be required to carry City-issued badges at all times. Since the City's Human Resources Department would need to retain outsourced resources or additional staffing to absorb the impact of this new requirement, the cost for FDLE Level II background checks and City ID cards, expected to be between \$75.00 and \$100.00, would be

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checks and City ID cards, expected to be between \$75.00 and \$100.00, would be transferred to the applicable contractor. Between now and the meeting, staff will conduct research and get a better indication of what is most commonly charged in the community.

2. Construction Contracts. Because it is not possible on most City projects to control access to construction sites, thereby limiting compliance, it is not recommended that the City implement a general background check requirement for these service contracts. Depending on the project, a case-by-case determination can be made for requiring background checks for employees working on sensitive access controlled sites, such as public safety site or sites under construction while children are present. In developing this recommendation, staff considered recommending that the City require contractors to conduct background checks on employees and, in the event of a crime committed by a contractor employee, indemnify and hold the City harmless for the actions of its employees. However, because of the high degree of subcontracting and employee turnover on these projects, such a mandate would impose possible liability concerns for contractors which may restrict the number of contractors willing to compete for City contracts.

Notwithstanding the above, staff believes there may be value in requiring City contractors to maintain a daily record of all contractor and sub-contractor employees accessing a project site. The daily record of personnel would be required to be submitted to the City monthly along with each payment application. In the event of any criminal activity in the vicinity of a project site, the daily record of personnel accessing the site may facilitate investigations by the Police Department, as well as act as a deterrent to criminal activity.

#### CONCLUSION

The Administration recommends that the Committee approve the aforementioned background check requirements. As of this writing, the Human Resources Department cannot accurately determine whether it has the capacity to absorb the increased activity. As a point of information, in August 2013, the department spent \$4,033 in pre-employment criminal background checks, more than double the amount spent in July; \$1,818. Therefore, the \$100.00 charge per person to the contractors is designed to offset additional staffing expenses the department may incur. If after several months of performing the work inhouse, the Human Resources Department determines the City is better served by contracting out the work, the Committee is encouraged to recommend to the Mayor and City Commission to approve the issuance of a solicitation for background screening services for the employees of City contractors.

JLM/KGB/AD/CD